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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2152 OF 2021

Smt. Jayashri Gajanan Marne) Age : 46 years,) Occ : Social Service / Business,) Residing at – S. No. 82/83 AAI NIWAS) Hamraj Chowk, Shastri Nagar,)) Kothrud, Pune.)	...Petitioner/ Wife of Detenue
Gajanan @ Maharaj @ Gajya) Pandharinath Marne)	...Detenu

Versus

- | | |
|---|------------------------------|
| <p>1. The State of Maharashtra,)
 Through Addl. Chief Secretary)
 (Home), Government of Maharashtra)
 Home Department (Special),)
 Mantralaya, Mumbai.)</p> | |
| <p>2. District Magistrate – Pune)
 New Collector Office Building,)
 Station Rd, Opposite Sasoon)
 Hospital, Pune, Maharashtra)
 411 001.)</p> | |
| <p>3. The Superintendent of Yerwada)
 Prison, Pune)</p> | |
| <p>4. The Superintendent of Nagpur)
 Central Prison, Nagpur)</p> | |
| <p>5. The Inspector of Police,)
 Paud Police Station,)
 Pune Rural, Pune)</p> | |
| <p>6. The Superintendent of Police,)
 Pune Rural, Pune)</p> | <p>...Respondents</p> |

Mr. Rajiv Chavhan, Senior Advocate a/w Mr. Aniket Ujjwal Nikam, Mr. A.I. Satpure, Ms. Priyanka Chavhan,

Mr. Piyush Toshnival, Mr. Vivek Arote, Mr. Amit R. Icham for the Petitioner.

Ms. M.H. Mhatre, APP for Respondent – State.

CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.

DATE : MARCH 01, 2022.

JUDGMENT (PER PRASANNA B. VARALE, J)

1. Challenge in the present Writ Petition is of quashing and setting aside the order of detention passed by Respondent No. 2 - District Magistrate, Pune dated 02nd March, 2021, under sub-section (1) of Section 3 of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug offenders, Dangerous persons and Video Pirates Act, 1981 (hereinafter referred to as '**said Act**') read with Section Government Order, Home Department (Special) No. MPDA-1220/P.K.200/SB/3(B) Dated 6th January, 2021 in respect of one Gajanan @ Maharaj @ Gajya Pandharinath Marne (for short '**detenu**').

2. Petitioner claiming to be the wife of detenu challenged the validity of the order stating it to be illegal, arbitrary and unconstitutional. The said detention order has been issued as the detenu is a

dangerous person whose activities are prejudicial to the maintenance of public order. The said detention order is based on two crimes i.e., (i). C.R. No. 48 of 2021 registered with Warje Malwadi Police Station for the offences punishable under Sections 352, 188, 168, 169, 143, 149 of the Indian Penal Code, 1860 & Under Section 51 (B) of Disaster Management Act, Section 3 of Epidemic Act, Section 7 of the Criminal Procedure Code, 1973 and Section 37(1)(3) and 135 of Maharashtra Police Act, (ii). C.R. No. 120 of 2021 registered with Hinjewadi Police Station for the offences punishable under Sections 279, 341, 504, 506 of the Indian Penal Code, 1860, Section 37(1)(3) and 135 of Maharashtra Police Act, Section 184, 119 and 177 of Motor Vehicle Act and Section 7 of the Criminal Procedure Code, 1973 and two in-camera statements of witnesses 'A' and 'B', were recorded on on 21st February, 2021 and and 22nd February, 2021 respectively and are duly verified by Mr. Amrut Deshmukh, Dy. S.P. Home, H.Q. Pune Rural.

3. Though, the number of grounds have been raised in the present Petition whereby the detention order has been assailed, however, the learned Senior Counsel

appearing for the Petitioner / Detenu heavily relied on four grounds before us i.e., ground nos. 'f', 'h', 'i' & 'j'.

4. Mr. Rajiv Chavhan, learned Senior Counsel appearing for the Petitioner – Detenu invited our attention to the ground 'f' and submitted that the detaining authority has taken into consideration two criminal cases registered against the detenu and two in-camera statements to support detention of detenu. Learned Senior Counsel further submitted that both the aforesaid FIR's pertain to same incident and both in-camera statements speak about same incident, therefore, this shows the non-application of mind by Respondent No. 2.

5. Learned Senior Counsel appearing for the Petitioner – Detenu then invited our attention to another ground i.e., ground 'h' and submitted that the detenu is not conversant with the English language, therefore, he has been served with the Marathi translated copy. Learned Senior Counsel further submitted that though, detenu was served with Marathi translated copy of grounds, however, there are many

discrepancies in the English and Marathi grounds of detention.

6. Learned Senior Counsel appearing for the Petitioner – Detenue then invited our attention to another ground i.e., ground 'i' and submitted that the detaining authority has taken into considered two crimes for the period between February, 2021, whereas the order of detention is belatedly passed on 02nd March, 2022. Learned Senior Counsel further submitted that according to Section 3(3) of the said Act the detaining authority shall forthwith report to the concerned State Government about issuance of detention order. Thus, the submissions is, the detaining authority has not complied with the requirement of law, in as much as, no report is sent promptly and expeditiously to the State Government forthwith as required by Section 3(3) of the said Act.

7. Learned Senior Counsel appearing for the Petitioner – Detenu then invited our attention another ground i.e., 'j' and submitted that representation of the detenu was received by the Nagpur Central Prison on 20/05/2021, thereafter the signature of detenue was

taken on the next day i.e., 21/05/2021 and then the said representation was sent to Additional Chief Secretary, Home Department (Special) by speed post. Thus, it is the submission of learned Senior Counsel appearing for Petitioner - Detenu that the Respondents have not explained the inordinate delay of two days in sending the said representation to the Government by the jail authority. Hence, learned Senior Counsel submitted that on this ground alone Petition deserves to be allowed.

8. In support of his submissions, learned Senior Counsel appearing for the Petitioner – Detenu placed reliance on following judgments: Rama Dhondu Borade Vs. V.K. Sara, Commissioner of Police and Ors¹, Harish Pahwa Vs. State of U.P. and Ors², Khurshid Liyakat Khan Vs. State of Maharashtra and Ors³, Shgun Raju Jogdand Vs. Commissioner of Police and Ors⁴, Rizwan @ Tippu Sattar Pathan Vs. The commissioner of Police, Pune and Ors⁵, Kala Chand Saran Vs. State of West Bengal⁶, Moinuddin Alias Moin Master Vs. District Magistrate, Beed and

1 (1989) 3 SCC 173

2 (1981) 2 SCC 710

3 WP/291/2021 (Bombay High Court)

4 2019 SCC OnLine Bom 8141

5 2014 OnLine Bom 1323

6 (1972) 4 SCC 58

Others⁷, Javed Siddiqui Vs. Superintendent District Jail, Jaunpur⁸, Praveen Iqbal Mandai Vs. Mr. M.N. Roy, The Commissioner of Police and Anr⁹, Mohd. Shamsuddin @ Sambu Vs. Union of India and Ors¹⁰, P. Chinnasammy Thevar Vs. State of Tamil Nadu and Another¹¹, Sunil Pandharinath Dhotre Vs. The Commissioner of Police, Nashik and Ors¹², Hetchin Haokip Vs. State of Manipur and Others¹³, Mahesh Gopinath Pawar Vs. The Commissioner of Police Pimpri Chinchwad and Others¹⁴, Dharani Raja Padyachi Vs. The State of Maharashtra and Ors¹⁵, Mahesh Kumar Chauhan Vs. Union of India¹⁶, T. Devaki Vs. Government of Tamil Nadu¹⁷, Rekha Vs. State of Tamil Nadu¹⁸, Vijay Singh Vs. State of Bihar¹⁹, Khaja Bilal Ahmed Vs. State²⁰ & Mrs. Tsering Dolkar Vs. Union Territory²¹. Thus, learned Senior Counsel appearing for the Petitioner – Detenu prayed that, Petition may be allowed.

7 (1987)m 4 SCC 58

8 AIR OnLine 2020 ALL 2721

9 2005 SCC OnLine Bom 971

10 1990 SCC OnLine Del 263

11 1991(1) MWN (CR) 112

12 WPST/2143/2020 (High Court of Bombay)

13 (2018) 9 SCC 562

14 WP/3372/2019

15 WP/520/2019

16 (1990) 3 SCC 148

17 (1990) 2 SCC 456

18 (2011) 5 SCC 244

19 (1984) 3 SCC 14

20 (2020) 13 SCC 632

21 (1987) 2 SCC 69

9. *Per contra*, Ms. Mhatre, learned APP appearing for Respondent – State invited our attention to the documents placed on record such as, order of detention, averments in the affidavit & additional affidavits filed by Respondent No. 2 – Dr. Rajesh Deshmukh, District Magistrate, Pune & affidavit filed by Shirish Nagorao Mohod, Deputy Secretary, Government of Maharashtra, Home Department (Special), affidavit filed by Anupkumar Madhukarrao Kumre, Superintendent, Nagpur Central Prison, Nagpur. Learned APP submitted that detaining authority considered two crimes registered against the detenu. Thereafter, in-camera statements of two witnesses were recorded and thereafter on 02nd March, 2021 order of detention was passed. Therefore, learned APP submitted that the detaining authority after proper application of mind considered the material / documents on record and arrived at the subjective satisfaction, and thereafter detention order has been passed.

10. In so far as the other ground of the Petitioner – Detenu that there is unexplained and inordinate delay in passing the order of detention is

concerned, learned APP submitted that the delay by itself cannot be a ground to quash the detention order, if delay is properly explained. In support of her submissions, learned APP placed reliance on following judgments : Salauddin Imamuddin Ansari and Anr Vs. The State of Maharashtra and Ors²², Harish Patil Vs. State of Maharashtra and Ors²³, Keshav Nilkanth Joglekar Vs. Commissioner of Police, Greater Bombay²⁴, Kamarunnissa Vs. Union of India and Another²⁵, Noor Salam Makani Vs. Union of India and Others²⁶, State of Tamil Nadu and another Vs. C. Subramani²⁷, Naeem Abdulla Khan Vs. The Commissioner of Police and Anr²⁸, Shri Amiya Kumar Karmakar Vs. The State of West Bengal²⁹, Panna (Smt) Vs. A.S. Samra and Others³⁰, Kantilal Hirji Shah Vs. State of T.N. and Others³¹. Thus, learned APP appearing for the Respondents – State prayed that Petition may be rejected.

11. With the able assistance of learned Counsel

22 2020 ALL MR (Cri) 1641

23 2016 LawSuit (Bom) 1666

24 1956 LawSuit (SC) 59

25 (1991) 1SCC 128

26 1994 CRI. L.J. 602

27 AIR 1992 SC 2161

28 Criminal Writ Petition No. 2312 of 2016

29 (1972) 2 SCC 672

30 1994 Supp (3) SCC 658

31 (2000) 7 SCC 606

appearing for respective parties, we have gone through the record.

12. Considering the entire record, in our opinion, the Petition is devoid of any merit, deserves to be dismissed.

13. We have carefully perused the detention order and grounds assigned therein. The Respondent No. 2 has made it clear that the order of detention is based only on two offences, which are referred to above and in-camera statements of two witnesses to show that the Petitioner - detenu has been habitually committing serious offences. The said offences show the criminal history of the detenu.

It is the submissions of learned Senior Counsel appearing for Petitioner - Detenu that the record covering 277 pages which is purported to have been placed before the detaining authority, therefore, the detaining authority himself could not have at all perused the said documents and could not have formulated the impugned grounds of detention. We are unable to accept this submission and it is not possible to accept that since the proposal contained 277 pages,

the detaining authority could not have gone through these pages. Learned APP was also justified in placing reliance in the judgment of Salauddin Imamuddin Ansari (supra).

14. So far the question as to whether the public order was involved, the grounds of detention elaborately described the acts which created dangerous and terrorized situations in the area and frequently disturbed public peace and order because of the acts of violence and danger caused to the public. It is stated by the detaining authority that an investigation of aforesaid two crimes revealed that the detenu created terror in the said area and also disturbed public order & peace. The witnesses from the said area have given in-camera statements & these statements were duly verified. The gist of the statements of witness no. 'A' and witness no. 'B' is also mentioned in the grounds of detention. The authority arrived at the subjective satisfaction that due to ill-acts of detenu people residing in said vicinity got scared and due to apprehension witnesses were not coming forward to make report / complaint against the detenu.

15. It is specifically mentioned by the detaining authority in the order of detention that he is subjectively satisfied that detenu is dangerous person as defined in Section 2(b-1) of the said Act. Learned APP was also justified in placing reliance in the judgment of Harish Patil (supra). It may not be out of place to refer to relevant portion of the judgment and the same reads thus:

22. What is necessary is that the Detaining Authority should be subjectively satisfied that the in-camera statements are true and genuine. It is not necessary that the subjective satisfaction to the said effect has to be reflected in the grounds of detention itself. Even if there is a contemporaneous document which shows that the Detaining Authority was subjectively satisfied that the in-camera statements were true and genuine, that will be sufficient. The term "subjective satisfaction" relates to "thinking". In the present case, we are concerned with the subjective satisfaction of the Detaining Authority. The term 'subjective satisfaction' has a reference to the mental element of the subject i.e., the

desires, feelings or perception of the Detaining Authority. The subjective satisfaction should be a reasonable one and not illusory or fanciful. On going through the grounds of detention and the documents relied upon by the Detaining Authority, it cannot be said that the subjective satisfaction is illusory or fanciful. In fact, we find that the subjective satisfaction is real and rational. In the present case, as stated earlier, there is material and contemporaneous documents before the Detaining Authority to show that the in-camera statements were true and genuine and copies of these documents have been furnished to the detenu. Thus, this ground too fails.

16. Upon careful perusal of the grounds of detention, it is evident that number of offences are registered against the detenu in the recent past. The offences registered till February, 2021 against the detenu so also preventive action taken against him mentioned by the detaining authority only to show that the detenu is history-sheeter having criminal antecedents so as to discredit him as a law abiding citizen and he is habitual offender.

17. It is also urged by learned Senior Counsel appearing for the Petitioner - Detenu that there is inordinate delay in passing the detention order and forwarding the same to the State Government. It is admitted fact that at some point of time the entire region of Pune City and neighboring talukas have recorded large number of Covid-19 patients and the Government Machinery was essentially engaged in making arrangements so as to take necessary steps and as such, considering the priority in the peculiar circumstances, the explanation given was justified and it cannot be said that the delay by itself makes the order of detention defective. Learned APP was also justified in placing reliance on the judgment in the matter of Keshav Nilkanth Joglekar (supra). For ready reference, we may quote relevant portion of the judgment and the same reads thus:

[10] We agree that "forthwith" in section 3(3) cannot mean the same thing as "as soon as may be" in section 7, and that the former is more peremptory than the latter. The difference between the two expressions lies, in our opinion, in this that while under section 7 the time that is allowed to

the authority to send the communication to the detenu is what is reasonably convenient, under section 3(3) what is allowed is only the period during which he could not, without any fault of his own, send the report.

Under section 7 the question is whether the time taken for communicating the grounds is reasonably requisite. Under section 3(3) it is whether the report has been sent at the earliest point of time possible, and when there is an inter-val of time between the date of the order and the date of the report, what has to be considered is whether the delay in sending the report could have been avoided.

[11] It was contended that as section 7 required that the communication should be made not later than 5 days from the date of the order, and as section 3(3) was more peremptory than section 7 in that it required that the report should be made forthwith, the period allowable under section 3(3) could not exceed 5 days, and that as in these cases the reports were sent 8 days later, they could not be held to have been sent forthwith. This argument mixes up two different matters contained

in section 7. The period of 5 days provided therein-is an absolute one and is independent of the period which is permissible under the expression "as soon as may be", which must, by its very nature, be indefinite depending on the facts and circumstances of the case.

It will be as erroneous to read 5 days into the period allowable under the expression "as soon as may be" as to read the 12 days within which the State has to approve the order under section 3(3) into the period which is allowable under the expression "forthwith". The result then is that the report sent by the Commissioner to the State on 21-1-1956 could be held to have been sent "forthwith" as required by section 3(3), only if the authority could satisfy us that, in spite of all diligence, it was not in a position to send the report during the period from 13th to 21st January 1956.

[12] ...

...

...

[13] We see no reason for not accepting these statements. What happened on the 16th and the following days are now matters of

history. The great city of Bombay was convulsed in disorders, which are among the worst that this country has witnessed. The Bombay police had a most difficult task to perform in securing life and property, and the authorities must have been working at high pressure in maintaining law and order. It is obvious that the Commissioner was not sleeping over the orders which he had passed or lounging supinely over them.

The delay such as it is due, to causes not of his making, but to causes to which the activities of the petitioners very largely contributed. We have no hesitation in accepting the affidavit, and we hold that the delay in sending the report could not have been avoided by the Commissioner and that when they were sent by him, they were sent "forthwith" within the meaning of section 3(3) of the Act. (Emphasis supplied)

18. It is also urged by learned Senior Counsel appearing for Petitioner - Detenu that there is no live link between the offences used for passing the detention order. In our opinion, there is a live link between the offences. As the offences are latest and the activities of the detenu in past were also causing

annoyance in public and the detenu was indulged in criminal activities, so it can be used as one of the additional ground to uphold the detention of the detenu.

19. Considering the discussions in foregoing paragraphs, we are of the opinion, that the Petition is devoid of merits as such, the same is deserves to be dismissed. Accordingly, Writ Petition is dismissed. Rule is discharged.

(SURENDRA P. TAVADE, J.)

(PRASANNA B. VARALE, J.)